Supreme Court of the United States.

Nos. 360 and 361.—October Term, 1904.

The Scottish Union and National Insurance Company, Appellant, 360 *vs.* Willis G. Bowland, as Treasurer, and L. Ewing Jones, as Auditor of Franklin County, Ohio; Arthur I. Vorys, as Superintendent of Insurance, and William S. McKinnon, as Treasurer of the State of Ohio.	Appeals from the Circuit Court of the United States for the Southern District of Ohio.
Willis G. Bowland, as Treasurer, and L. Ewing Jones, as Auditor of Franklin County, Ohio, et al., Appellants, 361 *vs.* The Scottish Union and National Insurance Company.	

[February 20, 1905.]

These cases are cross-appeals from a decree rendered in the Circuit Court upon bill and demurrer. The Scottish Union and National Insurance Company, a corporation of Great Britain, filed its bill to enjoin the defendants Willis G. Bowland, Treasurer, and L. Ewing Jones, Auditor of Franklin County, Ohio; Arthur I. Vorys, Superintendent of Insurance, and William S. McKinnon, Treasurer, of the State of Ohio, from the collection of taxes levied on certain bonds deposited by the complainant under the laws of Ohio regulating the right of foreign insurance companies to do business in that State. It appears from the averments of the bill that the bonds were deposited under section 3660 of the Revised Statutes of Ohio, as amended in 1894. (91 Ohio Laws, 40.) They were municipal bonds of the county of Lucas and State of Ohio. Fifty thousand dollars thereof was deposited on September 14, 1894, and $50,000 on November 7, 1894. The bonds were registered in the name of the Superintendent of Insurance, in trust for the benefit and security of the policyholders of the insurance company, residing in Ohio, and were delivered by him to the State treasurer for safe keeping, and remained in the office of the treasurer of the State at Columbus, Franklin County, Ohio, until withdrawn on April 2, 1903, when United States bonds were substituted therefor.

The insurance company is transacting the business of insurance in Ohio, but it avers that its home office is in the city of Edinburgh, Scotland, and

its chief office and managing agency for this country is at Hartford, Connecticut, from which office it conducts its business in Ohio.

Acting under the Ohio statute, section 2781*a*, (94 Ohio Laws, 62,) the auditor of Franklin County, by notice served on one of the local agents of the Scottish Union and National Insurance Company, notified it to appear and show cause why the said bonds should not be taxed against it on the duplicate of Franklin County, Ohio, and taxes collected thereon for the years 1895 to 1900, inclusive. The auditor entered upon the tax duplicate taxes against the insurance company for $2,700 each for the years 1895 to 1900, inclusive, and $2,700 each for the years 1898 to 1900, inclusive, and five per cent penalty thereon. On November 15, 1900, the treasurer of Franklin County brought a civil action against the company for taxes so assessed. This action at the time of the filing of the bill was still pending in the Court of Common Pleas of Franklin County, Ohio.

On December 4, 1903, another notice was served upon the company, through its local agent, and the auditor entered taxes against such company for the years 1901, 1902 and 1903, in all the sum of $8,935.50. On April 2, 1904, the treasurer of Franklin County procured a warrant of distraint, and upon such warrant demanded of the superintendent of insurance and the state treasurer the United States bonds so substituted on April 2, 1903, for such municipal bonds, for the purpose of seizing and selling the same to satisfy the taxes which had been assessed against the company with respect to the municipal bonds for the years 1895 to 1900, inclusive. It is averred that to permit the collection of these taxes by suit for personal judgment or distraint will be violative of complainant's treaty rights as a subject of Great Britain, and will be taking complainant's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

The prayer of the bill is, that the defendant, the treasurer of Franklin County, be restrained from collecting or attempting to collect any of the taxes against the complainant personally; that the said treasurer be restrained from collecting or attempting to collect said taxes or any portion of them by distraint against either such bonds of the United States so deposited or any personal property of complainant which may now or hereafter be situated in the county of Franklin or the State of Ohio; that the defendants, the superintendent of insurance and treasurer of the State of Ohio, be enjoined from delivering or attempting to deliver said United States bonds or any part thereof to the said county treasurer, and for such other relief as equity and good conscience may require.

The respondents having interposed demurrers to the bill, the court held that the municipal bonds on deposit in Ohio were subject to taxation under the laws of the State; that there was no personal liability of the complainant on account of said taxes, and therefore a civil action to recover the taxes

should be enjoined; that for the year 1903 the collection of taxes could not be enforced, as the United States bonds were substituted before the time for returning property for that year; that the bonds might be seized by distraint to satisfy the taxes levied upon the municipal securities for the years they were on deposit, and the court therefore refused to enjoin the execution of the distress warrant except for the taxes and penalty for the year 1903, and rendered a decree enjoining the collection of the taxes by civil action.

Both parties appealed, the company from so much of the decree as permitted distraint of the United States securities for the collection of taxes levied with respect to the municipal bonds, the treasurer and auditor of Franklin County from so much of the decree as denies the right of the State to prosecute a civil action against the company to recover the taxes aforesaid, and from so much thereof as restrained the officials from attempting to collect the taxes assessed against the municipal bonds for the year 1903.

Mr. Justice DAY, after making the foregoing statement, delivered the opinion of the Court.

These cases may be considered together, as they are appeals from a single decree and involve the right to assess and collect taxes upon the municipal bonds deposited by the insurance company under the laws of Ohio.

A considerable part of the opinion of the court below and the discussion in the briefs of counsel goes to the question of the power of the State to tax bonds, held as these were, within its jurisdiction. At the oral argument, however, the learned counsel representing the insurance company conceded that there was legislative power to impose the taxes in question. A reference to the decisions of this court makes it perfectly plain that such taxation is within the power of the State. (*New Orleans* v. *Stemple*, 175 U. S. 309; *Bristol* v. *Washington Co.*, 177 U. S. 133; *Blackstone* v. *Miller*, 188 U. S. 189; *Board of Assessors* v. *Comptoir National*, 191 U. S. 388, 403; *Carstairs* v. *Cochran*, 193 U. S. 10.)

The contention for the company is, that conceding the power of the State, it has never been exercised in the only way to make it effectual, which is by statutory enactment, and that the policy and statutes of Ohio have never authorized taxation of bonds deposited under the conditions shown in this case.

The question, therefore, is, have the statutes of Ohio, read in the light of the construction placed upon them by the Supreme Court of the State, conferred the right to tax these municipal bonds?

Before entering upon a consideration of the statutes we may say, in general terms, that we agree with the learned counsel for the insurance company, that the scheme of taxation of personal property in Ohio involves

the requirement that it shall be returned or listed by some person or corporation whose duty it is by law to return or list such property. Provision is not made for assessing or taxing personal property by proceedings *in rem*, but before a recovery for taxes can be justified, either by action or distraint, it must appear that it was required to be returned for the purpose of taxation under some law of the State.

The proceedings under which the taxes for the years included in this case were charged against the insurance company by the auditor of Franklin County are under a statute, (Revised Statutes of Ohio, section 2781*a*,) having for its purpose the correction of returns by those whose duty it was to return property for taxation, and making correction of returns so as to include property which should have been returned, but had been omitted, by some person charged by law with that duty.

Was it the duty of the insurance company or any one acting for it to return these municipal bonds for taxation? They were required to be deposited under section 3660, Rev. Stat. of Ohio, as amended, which reads as follows:

"SEC. 3660. [*Certain companies must make deposit.*]—A company incorporated by or organized under the laws of a foreign government shall deposit with the superintendent of insurance, for the benefit and security of its policyholders residing in this State, a sum not less than one hundred thousand dollars in stocks or bonds of the United States, or the State of Ohio, or any municipality or county thereof, which shall not be received by the superintendent at a rate above their par value; the stocks and securities so deposited may be exchanged from time to time for other like securities; so long as the company so depositing continues solvent and complies with the laws of this State, it shall be permitted by the superintendent to collect the interest or dividends on such deposit; and for the purposes of this chapter the capital of any foreign company doing fire insurance business in this State shall be deemed to be the aggregate value of its deposits with the insurance or other departments of this State and of the other States of the United States, for the benefit of policyholders in this State, or in the United States, and its assets and investments in the United States, certified according to the provisions of this chapter; but such assets and investments must be held within the United States and invested in and held by trustees, who must be citizens of the United States, appointed by the board of directors of the company, and approved by the insurance commissioner of the State where invested, for the benefit of the policyholders and creditors in the United States; and the trustees so chosen may take, hold and convey real and personal property for the purpose of the trust, subject to the same restrictions as companies of this State." [91 v. 40; 70 v. 147, § 21; (S. & S. 212).]

This section is part of the chapter of the Ohio statutes regulating insurance companies other than life. In the same chapter may be found other sections regulating the manner of doing business in Ohio by insurance companies, and in section 3637 we find a provision as to how the capital of domestic insurance companies shall be invested, and such companies are

required to invest their capital in certain United States, State, county and municipal bonds, etc. These domestic companies are in like manner required to deposit such securities with the commissioner for the benefit of their policyholders, (Rev. Stat. of Ohio, §§ 3593, 3595,) and without such deposit are not authorized to do business within the State. As a condition of doing business in Ohio companies organized under the laws of foreign governments are, by section 3660, required to invest a portion of their capital in the stock or bonds of the United States or of the State of Ohio, or some municipality or county thereof, and make deposit of such bonds with the superintendent of insurance for the benefit of local policyholders. Subsequent provisions of the section further show that this deposit is to be regarded as a part of the capital of such foreign insurance company which may be considered in determining the aggregate capital of the company required by law. The companies are permitted to collect the interest or dividends on the securities. These deposits constitute a fund primarily for the benefit of such policyholders, and after their claims are satisfied may be turned over to an assignee or devoted to other purposes. (*Falkenbach* v. *Patterson*, 43 O. S. 359; *State* v. *Matthews*, 64 O. S. 419.)

This statute, therefore, provides for the manner of investment of a portion of the capital stock of a foreign insurance company within the State of Ohio for the protection of the policyholders within the State. It is more than a mere "investment in bonds." It is also a part of the capital stock required to be deposited as a condition of doing business within the State and devoted to the benefit of local stockholders.

The authority to enact laws for the imposition of taxes is found in the Constitution of the State, article 12, section 2, which provides: "Laws shall be passed, taxing by a uniform rule all moneys, credits, investments in bonds, stock, joint stock companies, or otherwise; and also all real and personal property according to its true value in money."

Section 2731 provides, in language similar to that used in the Constitution, for the taxation of all property, real and personal, in the State, and all moneys, credits, investments in bonds, stock, or otherwise, of persons residing in the State. This section is found in the first chapter of Title 13, "Taxation," of the Ohio Statutes, and is in part in the following language:

"SEC. 2731. All property, whether real or personal, in this State, and whether belonging to individuals or corporations; and all moneys, credits, investments in bonds, stock, or otherwise, of persons residing in this State, shall be subject to taxation, except only such as may be expressly exempted therefrom; and such property, moneys, credits, and investments shall be entered on the list of taxable property as prescribed in this title."

The argument for the insurance company is, that this preliminary section, read with the other sections of the Ohio law upon the subject, excludes "investment in bonds" from being embraced in a general description of

personal property, and limits their taxation to persons residing in the State, or (under section 2730) where they are held within the State for others by persons residing therein.

Section 2730 of the same chapter is a section giving definitions of terms used in the title. So far as it is pertinent in this connection, that section is as follows:

"SEC. 2730. The term 'investments in bonds' shall be held to mean and include all moneys in bonds or certificates of indebtedness, or other evidence of indebtedness of whatever kind, whether issued by incorporated or unincorporated companies, towns, cities, villages, townships, counties, States or other incorporations, or by the United States, held by persons residing in this State, whether for themselves or others."

If these sections embraced all the statutory law of the State, together they tax investments in bonds held by residents, because of jurisdiction over the person of the owner, and those held by residents for other owners, and if such reside out of the State, because of jurisdiction over the property held within the State.

Section 2744 undertakes to make provision for the taxation of corporations generally, and is as follows:

"SEC. 2744. [*Corporations generally; their returns.*]—The president, secretary and principal accounting officer of every canal or slackwater navigation company, turnpike company, plank-road company, bridge company, insurance company, telegraph company or other joint stock company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by any law of this State or not, shall list for taxation, verified by the oath of the person so listing, all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys and credits of such company or corporation within the State, at the actual value in money, in manner following: In all cases return shall be made to the several auditors of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each township, village, city or ward therein. The value of all movable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, cities, villages or townships, *pro rata*, in proportion to the value of the real estate and fixed property in said ward, city, village or township, and all property so listed shall be subject to and pay the same taxes as other property listed in such ward, city, village or township. It shall be the duty of the accounting officer aforesaid to make return to the auditor of State during the month of May of each year of the aggregate amount of all property by him returned to the several auditors of the respective counties in which the same may be located. It shall be the duty of the auditor of each county, on or before the first Monday of May, annually, to furnish the aforesaid president, secretary, principal accounting officer or agent the necessary blanks for the purpose of making aforesaid returns; but no neglect or failure on the part of the county audi-

tor to furnish such blanks shall excuse any such president, secretary, principal accountant or agent from making the returns within the time specified herein. If the county auditor to whom returns are made is of opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county auditor, he is hereby required to proceed to have the same valued and assessed: *Provided*, that nothing in this section shall be so construed as to tax any stock or interest in any joint stock company held by the State. [73 v. 139, § 16; (S. & C. 1446).]

This section is broad in its terms, and requires the return of the property, among others, of insurance companies, whether incorporated by the laws of Ohio or not, and such companies are required to list for taxation "all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys and credits of such company or corporation within the State, at its actual value in money."

The Supreme Court of Ohio has expressly held that this section applies to foreign as well as domestic corporations. (*Hubbard* v. *Brush*, 61 O. S. 252; *Lander* v. *Burke*, 65 O. S. 532–542.)

This section, therefore, requires of both foreign and domestic insurance companies that they return the personal property mentioned which is within the State. What is meant by "personal property," in this connection? Referring to section 2730 we find it provided that the terms "personal property," when used in the title, shall be held to mean and include, among other things, the capital stock, undivided profits and all other means not forming a part of the capital stock of every company.

In the case of domestic corporations, and assuming that this statute applies, as has been held by the Supreme Court of Ohio, with equal force to foreign corporations, this definition of personal property must be held to include not only the paid in capital stock of the company, but as well the bonds, or securities in which it may be invested.

This question was before the Supreme Court of Ohio in *Jones* v. *Davis*, (35 O. S. 474.)

In that case the act of May 11, 1878, was before the court. It contained provisions similar to those of the Revised Statutes, requiring personal property of every description, moneys and credits, investments in bonds, stock, joint stock companies, or otherwise, to be listed in the name of the person who is the owner thereof on the day preceding the second Monday of April in each year.

Section 11 of that act made provisions similar to those found in section 2744, requiring incorporated companies to list for taxation all their personal property which, by the terms of the statute, was made to include all

such real estate as was necessary to the daily operation of the company, and all its moneys and credits within the State at their actual value in money. After citing *Bank Tax Case*, (2 Wall. 208,) and *Farrington* v. *Tennessee*, (95 U. S. 686,) Judge Boynton, delivering the opinion of the court, said:

"For the purpose of taxation, the capital stock is represented by whatever it is invested in. Personal property, by the express wording of the statute, is made to include the capital stock of a corporation; and the provision above referred to requires all corporations doing business in this State, except banking and others whose taxation is specifically provided for, to list all their personal property, including in the return thereof all such real estate as is necessary to the daily operation of their business, together with their moneys and credits of every description within the State. That the legislature intended, by this description of property, to embrace the capital stock of the company is too obvious to be misunderstood. No other meaning can be drawn from the language employed, and no other construction is better calculated to do justice."

In *Lee* v. *Sturgis*, (46 O. S. 153, 160,) Judge Spear, speaking for the court, said:

"It may be assumed that 'capital stock' and 'capital and property' mean practically the same thing. Primarily the capital stock is the money paid in by the stockholders in compliance with the terms of their subscription. It soon, however, takes the form of real estate or personal property, or both, including machinery, buildings, credits, rights in action, etc. So that it may here be taken to mean personal property, and such real estate as may be necessary to the daily operations of the company and its moneys and credits. The capital is thus represented by the property in which it has been invested."

We think this language pertinent in the consideration of the case before us. While technically the bonds deposited with the insurance commissioner are investments in bonds, they are also a part of the capital stock of the company invested in Ohio, and required to be so invested for the security of domestic policyholders, and, for the purposes of taxation, to be considered a part of the capital stock of the company and included within the definition of "personal property," as given in section 2730.

This conclusion is reinforced by the decision in *Hubbard* v. *Brush*, (61 O. S. 252.) In that case the Supreme Court of Ohio held that a foreign corporation transacting business in Ohio was required to return its property within the State where it was carrying on business, although the corporation was organized under the laws of West Virginia.

The court admitted that the situs of intangible property is ordinarily at the local residence of the corporation, within the State where it was incorporated. Nevertheless, as the promissory notes and book accounts and other evidence of indebtedness must be presumed to have been in the company's office in this State, they were taxable as personal property under section 2744.

In the course of the opinion Judge Bradbury said:

"Where foreign corporations voluntarily bring their property and business into this State to avail themselves of advantages found here, which they believe will enhance the probabilities that the business they intend to pursue will be profitable, they should not be heard to complain of laws which tax them as domestic corporations are taxed by the State. We hold, therefore, that the provisions of section 2744, which make it the duty of foreign corporations to list for taxation in this State their choses in action, where they are held within this State and grow out of the business they conduct herein, is a valid exercise of the taxing powers vested in the State."

Under section 2744, corporations, foreign and domestic, are required to return all personal property for taxation, which, among other things, the statute expressly declares shall include moneys and credits of such company or corporation within the State. If the construction contended for shall prevail, a corporation, with capital invested in bonds, would escape taxation, while one holding its investments in notes or certificates of deposit in bank will be compelled to return them for taxation—a condition of things so manifestly unjust that we cannot hold it to have been within the intent of the legislature in framing taxing laws unless the statutes clearly admit of no other construction. The purpose of the Ohio constitution and statutes passed in pursuance thereof, as has been frequently declared by the Supreme Court of Ohio, is to tax by a uniform rule all property owned or held within the State. A narrow construction, which will defeat this purpose, should not be adopted.

The statutes, specifically mentioning "investments in bonds," were intended to reach and tax, and not to exempt, that class of personal property. The purpose to tax all real and personal property, declared in the statute, was further emphasized by express mention of certain classes of property, such as investments in bonds, so that by no process of exclusion could such securities escape the burdens imposed upon all property owned or held within the State.

The sections taxing individuals holding such securities were not intended to put limitations upon other sections of the law taxing the property of corporations held within the State and enjoying the protection of its laws, and affording a basis for credit in the transacting of business. There is no reason why the law should tax such securities in the hands of individual residents, whether owned or held by them for others, and permit them to escape taxation when they represent invested capital of incorporated companies, sharing the protection of the Government and equally bound in morals, at least, to help bear the burdens of the State.

That such securities might justly be taxed was freely admitted in the argument at bar, and the sole contention was that the lack of statutory power to tax these securities is a *casus omissus* in legislation which the courts cannot supply.

It may be conceded that no tax can be levied without express authority of law, but the statutes are to receive a reasonable construction with a view to carrying out their purpose and intent.

We have examined the decisions of the Supreme Court of Ohio, cited by counsel, construing the statutes of the State, and believe none of them to be inconsistent with the conclusions we have reached, and those above cited, in our opinion, are direct authority for the construction given. All the sections must be construed together to attain the object and intent of the law. Section 2731, standing alone, might limit the right to tax investments in bonds to residents of the State. It is certainly enlarged by section 2730 to include such investments when held for others by residents within the State. Read with sections 2734, 2735, 2744 and 2746, we think the purpose is manifest to require the return and taxation of all personal property, except the small exemptions allowed, within the jurisdiction of the State.

But it is urged if section 2744 could otherwise be held to require a return of these bonds by the insurance company, that the company comes within the exception of the statute excluding banking or other corporations whose taxation is specifically provided for in other parts of the title. And it is argued that section 2745 of the Revised Statutes of Ohio makes express provision for the taxation of foreign insurance companies.

Examination of this section shows that it imposes a tax upon the business of the company in Ohio, and is not a property but a privilege tax. Insurance companies are required to return in each county the amount of the gross premium receipts of its agency for the previous calendar year, and under certain regulations the company is taxed upon the amount of business done.

This section does not levy a tax upon property. There are subsequent statutory provisions of a special character, upon which the exception of section 2744 may operate, taxing the property of railroad companies, banks, express, telegraph and telephone companies, etc., but there is no other provision imposing a property tax upon foreign insurance companies within the State.

The requirement that these bonds should be deposited for the security of the local policyholders brought a part of the capital of such company into the State of Ohio upon the strength of which it transacts its business and obtains credit within the State. Clearly, such property is not intended to be taxed within the provisions reaching the business done in the State of Ohio under section 2745.

But it is said that there is no person within the State required to return this property. We think it is the duty of the officers of the insurance company, under section 2744, to return the property, and that the place to return it is where the property is situated. This is clearly required by the terms of this section, and section 2735, making provision for the place of listing personal property, provides:

"And all other personal property, moneys, credits, and investments, except as otherwise specially provided, shall be listed in the township, city, or village in which the person to be charged with taxes thereon may reside at the time of the listing thereof, if such person reside within the county where the same are listed, and if not, then in the township, city, or village where the property is when listed."

These bonds were the property of the corporation taxable under the statutes, and, at the time when they should have been listed, were held in the city of Columbus, Franklin County, Ohio, and should have been there returned.

It is further argued that to distrain the property of the company for the collection of these taxes would be a violation of the constitutional rights of the insurance company, and the taking of its property without due process of law. Section 1095 provides:

"SEC. 1095. [*Overdue taxes may be collected by distress.*]—When taxes are past due and unpaid, as stated in the preceding section, the county treasurer, or his deputy, may distrain sufficient goods and chattels belonging to the person or persons charged with such taxes, if found within his county, to pay the taxes so remaining due and the costs that have accrued; and shall immediately proceed to advertise the same in three public places in the township where such property was taken, stating the time when, and the place where, such property will be sold; and if the taxes and costs which have accrued thereon are not paid before the day appointed for such sale, which shall be not less than ten days after the taking of such property, such treasurer, or his deputy, shall proceed to sell such property at public vendue, or so much thereof as will be sufficient to pay said taxes and the costs of such distress and sale. (29 v. 291, Sec. 19; S. & C. 1586.)"

This section authorizes the distraint of goods to satisfy taxes lawfully levied against property within the county and State. This method of collecting taxes is one of the most ancient known to the law, and has frequently received the sanction of the courts. (*Murray's Lessees* v. *Hoboken*, 18 How. 272, 276; *Springer* v. *United States*, 102 U. S. 586; Cooley on Taxation, 302; *Palmer* v. *McMahon*, 133 U. S. 660.)

There is nothing in the exemption of Government bonds from taxation which prevents them from being seized for taxes due upon unexempt property. We have held that the taxes were lawfully assessed. The statute authorizing a distraint gave the right to proceed against personal property within the jurisdiction of the State. The taxes were lawful, and the property belonging to a foreign corporation which could be seized within the authority of the State might be taken under this statute, and we do not perceive that any constitutional right of the company is violated by seizing its property under such circumstances. (*Bristol* v. *Washington Co.*, 177 U. S. 133; *Marye* v. *Baltimore & Ohio Ry. Co.*, 127 U. S. 117.)

As to the right to assess taxes for the year 1903, it appears that these municipal bonds were withdrawn from the State some time before the return

day, which is the day preceding the second Monday in April, and such withdrawal was in the exercise of a lawful right of the company so to do, and other securities were substituted as provided by law. We do not think that the fact that it had bonds in the State for a time which were taxable justified the imposition of this tax, where the non-taxable securities were substituted before the return day.

As to the question of personal liability of the insurance company to judgment in an action brought to recover the amount of the taxes, we think the court should not have issued an injunction, as was done, against the prosecution of civil suits for this purpose. If there is no personal liability for these taxes—a point which we do not feel called upon to decide—it is perfectly clear that if service could be had which would make a personal judgment proper, the company could set up its defence by answer in the action at law, and there is no necessity to resort to a court of equity for relief. It will be presumed, if the claim of the company is right, no personal judgment will be rendered against it, and if its theory of the controversy is correct no such judgment can be lawfully rendered. In such case the authorities are uniform that equity will not interfere by injunction, but leave the party to his defence at law. (Revised Statutes of United States, § 723; *Insurance Company* v. *Bailey*, 13 Wall. 616–623; *Grand Chute* v. *Winegar*, 15 Wall. 373; *Dewcese* v. *Reinhard*, 165 U. S. 386.)

Upon the whole case we reach the conclusion that the Circuit Court was right in sustaining the demurrer so far as the bill averred the non-taxability of these bonds, or the right of the treasurer to proceed by distraint, and in overruling the demurrer as to the taxes for the year 1903; but, for the reasons stated, erred in enjoining the prosecution of a civil action seeking a personal judgment.

In this view, the decree below will be reversed and the cause remanded for further proceedings in conformity to this opinion.

True copy.

Test:

Clerk Supreme Court, U. S.